

State of Wisconsin


LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/09/2008 (Per: GMM)



Appendix A ... Pt. 09J of 09

 The 2007 drafting file for LRB-0174

has been transferred to the drafting file for

2009 LRB-0150

☛ This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

☛ The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/08/2006 (Per: GMM)

↑ ↑ ↑ ↑
☞ Appendix A ... Part 10 of 12

☞ The 2005 drafting file for LRB 05-4299

has been transferred to the drafting file for

2007 LRB 07-0174

☞ This cover sheet, the final request sheet, and the final version of the 2005 draft were copied on yellow paper, and returned to the original 2005 drafting file.

☞ The attached 2005 draft was incorporated into the new 2007 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2007 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

1 **SECTION 82.** 48.355 (2d) (c) 1. of the statutes is renumbered 48.355 (2d) (c) and
2 amended to read:

3 48.355 **(2d)** (c) If the court finds that any of the circumstances ~~specified in~~
4 under par. (b) 1. to 5. applies with respect to a parent, the court shall hold a hearing
5 under s. 48.38 (4m) within 30 days after the date of that finding to determine the
6 permanency plan for the child. ~~If a hearing is held under this subdivision, the agency~~
7 ~~responsible for preparing the permanency plan shall file the permanency plan with~~
8 ~~the court not less than 5 days before the date of the hearing.~~

9 **SECTION 83.** 48.355 (2d) (c) 2. of the statutes is repealed.

10 **SECTION 84.** 48.355 (2d) (c) 3. of the statutes is repealed.

11 **SECTION 85.** 48.357 (1) (am) 1g. of the statutes is created to read:

12 48.357 **(1)** (am) 1g. If the child is an Indian child, a notice under subd. 1. shall
13 also contain specific information showing that continued custody of the Indian child
14 by the parent or Indian custodian is likely to result in serious emotional or physical
15 damage to the child, specific information showing that the agency primarily
16 responsible for implementing the dispositional order has made active efforts to
17 prevent the breakup of the Indian family and that those efforts have proved
18 unsuccessful, a statement as to whether the new placement is in compliance with the
19 order of placement preference under s. 48.345 (3m) and, if the new placement is not
20 in compliance with that order, specific information showing good cause for departing
21 from that order.

22 **SECTION 86.** 48.357 (1) (am) 1m. of the statutes is created to read:

23 48.357 **(1)** (am) 1m. If the child is an Indian child, notice under subd. 1. to the
24 Indian child's parent shall be provided in the manner specified in s. 48.273 (1) (ag).
25 In like manner, the court shall also provide notice of the hearing, together with a copy

1 of the request for the change in placement, to the Indian child's Indian custodian and
2 tribe. No hearing on the request may be held until at least 10 days after receipt of
3 the notice by the Indian child's parent, Indian custodian, and tribe. On request of
4 the Indian child's parent, Indian custodian, or tribe, the court shall grant a
5 continuance of up to 20 additional days to enable the requester to prepare for the
6 hearing.

7 **SECTION 87.** 48.357 (1) (am) 2. of the statutes is amended to read:

8 48.357 (1) (am) 2. Any person receiving the notice under subd. 1. or notice of
9 a specific placement under s. 48.355 (2) (b) 2., other than a court-appointed special
10 advocate, may obtain a hearing on the matter by filing an objection with the court
11 within 10 days after receipt of the notice. Placements may not be changed until 10
12 days after that notice is sent to the court unless the parent, guardian, ~~or~~ legal
13 custodian, or Indian custodian and the child, if 12 years of age or over, or the child
14 expectant mother, if 12 years of age or over, her parent, guardian, ~~or~~ legal custodian,
15 or Indian custodian and the unborn child by the unborn child's guardian ad litem,
16 or the adult expectant mother and the unborn child by the unborn child's guardian
17 ad litem, sign written waivers of objection, except that changes in placement that
18 were authorized in the dispositional order may be made immediately if notice is
19 given as required under subd. 1. In addition, a hearing is not required for placement
20 changes authorized in the dispositional order except when an objection filed by a
21 person who received notice alleges that new information is available that affects the
22 advisability of the court's dispositional order.

23 **SECTION 88.** 48.357 (1) (am) 3. of the statutes is amended to read:

24 48.357 (1) (am) 3. If the court changes the child's placement from a placement
25 outside the home to another placement outside the home, the change in placement

1 order shall contain one of the statements ~~specified in~~ under sub. (2v) (a) 2. If the court
2 changes the placement of an Indian child from a placement outside the home to
3 another placement outside the home, the change in placement order shall, in
4 addition, comply with the order of placement preference under s. 48.345 (3m) and
5 contain the findings under sub. (2v) (a) 4.

NOTE: The DHFS draft amends s. 48.355 (2m) to require the active efforts and serious harm findings to be made when changes in transitional placements are made. Section 48.355 (2m), however, provides that the procedures of s. 48.357 govern transitions. Accordingly, the amendments made to s. 48.357 by this draft will cover those findings and no amendment to s. 48.355 (2m) is necessary.

6 **SECTION 89.** 48.357 (1) (c) 1m. of the statutes is created to read:

7 48.357 (1) (c) 1m. If the child is an Indian child, a request under subd. 1. shall
8 also contain specific information showing that continued custody of the Indian child
9 by the parent or Indian custodian is likely to result in serious emotional or physical
10 damage to the child, specific information showing that the agency primarily
11 responsible for implementing the dispositional order has made active efforts to
12 prevent the breakup of the Indian family and that those efforts have proved
13 unsuccessful, a statement as to whether the new placement is in compliance with the
14 order of placement preference under s. 48.345 (3m) and, if the new placement is not
15 in compliance with that order, specific information showing good cause for departing
16 from that order.

17 **SECTION 90.** 48.357 (1) (c) 2m. of the statutes is created to read:

18 48.357 (1) (c) 2m. If the child is an Indian child, notice under subd. 2. to the
19 Indian child's parent shall be provided in the manner specified in s. 48.273 (1) (ag).
20 In like manner, the court shall also provide notice of the hearing, together with a copy
21 of the request for the change in placement, to the Indian child's Indian custodian and
22 tribe. No hearing on the request may be held until at least 10 days after receipt of

1 the notice by the Indian child's parent, Indian custodian, and tribe. On request of
2 the Indian child's parent, Indian custodian, or tribe, the court shall grant a
3 continuance of up to 20 additional days to enable the requester to prepare for the
4 hearing.

5 **SECTION 91.** 48.357 (1) (c) 3. of the statutes is amended to read:

6 48.357 (1) (c) 3. If the court changes the child's placement from a placement in
7 the child's home to a placement outside the child's home, the change in placement
8 order shall contain the findings ~~specified in~~ under sub. (2v) (a) 1., one of the
9 statements ~~specified in~~ under sub. (2v) (a) 2., and, if in addition the court finds that
10 any of the circumstances ~~specified in~~ under s. 48.355 (2d) (b) 1. to 5. applies with
11 respect to a parent, the determination ~~specified in~~ under sub. (2v) (a) 3. If the court
12 changes the placement of an Indian child from a placement in the child's home to a
13 placement outside the child's home, the change in placement order shall, in addition,
14 comply with the order of placement preference under s. 48.345 (3m) and contain the
15 findings under sub. (2v) (a) 4.

16 **SECTION 92.** 48.357 (2m) (a) of the statutes is amended to read:

17 48.357 (2m) (a) The child, the parent, guardian, ~~or~~ legal custodian, or Indian
18 custodian of the child, the expectant mother, the unborn child by the unborn child's
19 guardian ad litem, or any person or agency primarily bound by the dispositional
20 order, other than the person or agency responsible for implementing the order, may
21 request a change in placement under this paragraph. The request shall contain the
22 name and address of the new placement requested and shall state what new
23 information is available that affects the advisability of the current placement. If the
24 proposed change in placement would change the placement of a child placed in the
25 child's home to a placement outside the child's home, the request shall also contain

1 specific information showing that continued placement of the child in the home
2 would be contrary to the welfare of the child and, unless any of the circumstances
3 specified in under s. 48.355 (2d) (b) 1. to 5. applies, specific information showing that
4 the agency primarily responsible for implementing the dispositional order has made
5 reasonable efforts to prevent the removal of the child from the home, while assuring
6 that the child's health and safety are the paramount concerns. The request shall be
7 submitted to the court. ~~In addition, the~~ The court may also propose a change in
8 placement on its own motion.

9 **SECTION 93.** 48.357 (2m) (am) of the statutes is created to read:

10 48.357 (2m) (am) If the proposed change of placement would change the
11 placement of an Indian child placed in the child's home to a placement outside the
12 child's home, a request under par. (a) shall also contain specific information showing
13 that continued custody of the Indian child by the parent or Indian custodian is likely
14 to result in serious emotional or physical damage to the child, specific information
15 showing that the agency primarily responsible for implementing the dispositional
16 order has made active efforts to prevent the breakup of the Indian family and that
17 those efforts have proved unsuccessful, a statement as to whether the new placement
18 is in compliance with the order of placement preference under s. 48.345 (3m) and, if
19 the new placement is not in compliance with that order, specific information showing
20 good cause for departing from that order.

21 **SECTION 94.** 48.357 (2m) (b) of the statutes is amended to read:

22 48.357 (2m) (b) The court shall hold a hearing ~~on the matter~~ prior to ordering
23 any change in placement requested or proposed under par. (a) if the request states
24 that new information is available that affects the advisability of the current
25 placement, ~~unless~~. A hearing is not required if the requested or proposed change in

1 placement ~~involves any change in placement other than~~ does not involve a change
2 in placement of a child placed in the child's home to a placement outside the child's
3 home ~~and~~, written waivers of objection to the proposed change in placement are
4 signed by all persons entitled to receive notice under sub. (1) (am) 1., other than a
5 court-appointed special advocate, and the court approves. If a hearing is scheduled,
6 not less than 3 days before the hearing the court shall notify the child, the parent,
7 guardian, and legal custodian of the child, any foster parent, treatment foster parent,
8 or other physical custodian described in s. 48.62 (2) of the child, the child's
9 court-appointed special advocate, all parties who are bound by the dispositional
10 order, and, if the child is an Indian child, the Indian child's Indian custodian and
11 tribe. If the child is the expectant mother of an unborn child under s. 48.133, the
12 court shall also notify the unborn child by the unborn child's guardian ad litem, ~~or~~,
13 If the change in placement involves an adult expectant mother of an unborn child
14 under s. 48.133, the court shall notify the adult expectant mother, the unborn child
15 by the unborn child's guardian ad litem, and all parties who are bound by the
16 dispositional order, at least 3 days prior to the hearing. A copy of the request or
17 proposal for the change in placement shall be attached to the notice. If all of the
18 parties consent, the court may proceed immediately with the hearing.

19 **SECTION 95.** 48.357 (2m) (bm) of the statutes is created to read:

20 48.357 (2m) (bm) If the proposed change in placement would change the
21 placement of an Indian child placed in the child's home to a placement outside the
22 child's home, notice under par. (b) to the Indian child's parent shall be provided in
23 the manner specified in s. 48.273 (1) (ag). In like manner, the court shall also provide
24 notice of the hearing, together with a copy of the request or proposal for the change
25 in placement, to the Indian child's Indian custodian and tribe. No hearing on the

1 request or proposal may be held until at least 10 days after receipt of the notice by
2 the Indian child's parent, Indian custodian, and tribe. On request of the Indian
3 child's parent, Indian custodian, or tribe, the court shall grant a continuance of up
4 to 20 additional days to enable the requester to prepare for the hearing.

5 **SECTION 96.** 48.357 (2m) (c) of the statutes is amended to read:

6 48.357 (2m) (c) If the court changes the child's placement from a placement in
7 the child's home to a placement outside the child's home, the change in placement
8 order shall contain the findings ~~specified in~~ under sub. (2v) (a) 1., one of the
9 statements ~~specified in~~ under sub. (2v) (a) 2., and, if in addition the court finds that
10 any of the circumstances ~~specified in~~ under s. 48.355 (2d) (b) 1. to 5. applies with
11 respect to a parent, the determination ~~specified in~~ under sub. (2v) (a) 3. If the court
12 changes the placement of an Indian child from a placement in the child's home to a
13 placement outside the child's home, the change in placement order shall, in addition,
14 comply with the order of placement preference under s. 48.345 (3m) and contain the
15 findings under sub. (2v) (a) 4.

16 **SECTION 97.** 48.357 (2v) (a) 4. of the statutes is created to read:

17 48.357 (2v) (a) 4. If the change in placement order changes an Indian child's
18 placement from a placement in the Indian child's home to a placement outside the
19 Indian child's home, a finding supported by clear and convincing evidence, including
20 the testimony of one or more qualified expert witnesses, that continued custody of
21 the Indian child by the parent or Indian custodian is likely to result in serious
22 emotional or physical damage to the child and a finding supported by clear and
23 convincing evidence that the agency primarily responsible for implementing the
24 dispositional order has made active efforts to prevent the breakup of the Indian
25 family and that those efforts have proved unsuccessful.

1 **SECTION 98.** 48.357 (2v) (c) 1. of the statutes is renumbered 48.357 (2v) (c) and
2 amended to read:

3 48.357 (2v) (c) If the court finds under par. (a) 3. that any of the circumstances
4 ~~specified in~~ under s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the court
5 shall hold a hearing under s. 48.38 (4m) within 30 days after the date of that finding
6 to determine the permanency plan for the child. ~~If a hearing is held under this~~
7 ~~subdivision, the agency responsible for preparing the permanency plan shall file the~~
8 ~~permanency plan with the court not less than 5 days before the date of the hearing.~~

9 **SECTION 99.** 48.357 (2v) (c) 2. of the statutes is repealed.

10 **SECTION 100.** 48.357 (2v) (c) 3. of the statutes is repealed.

11 **SECTION 101.** 48.363 (1) (a) of the statutes is amended to read:

12 48.363 (1) (a) A child, the child's parent, guardian ~~or~~, legal custodian, or Indian
13 custodian, an expectant mother, an unborn child by the unborn child's guardian ad
14 litem, any person or agency bound by a dispositional order, or the district attorney
15 or corporation counsel in the county in which the dispositional order was entered
16 may request a revision in the order that does not involve a change in placement,
17 including a revision with respect to the amount of child support to be paid by a
18 parent, ~~or the.~~ The court may ~~on its own motion~~ also propose such a revision. The
19 request or court proposal shall set forth in detail the nature of the proposed revision
20 and what new information is available that affects the advisability of the court's
21 disposition. The request or court proposal shall be submitted to the court. The court
22 shall hold a hearing on the matter prior to any revision of the dispositional order if
23 the request or court proposal indicates that new information is available which
24 affects the advisability of the court's dispositional order, unless written waivers of

1 objections to the revision are signed by all parties entitled to receive notice and the
2 court approves.

3 **SECTION 102.** 48.363 (1) (b) of the statutes is amended to read:

4 48.363 (1) (b) If a hearing is held, at least 3 days before the hearing the court
5 shall notify the child, the child's parent, guardian, and legal custodian, all parties
6 bound by the dispositional order, the child's foster parent, treatment foster parent,
7 or other physical custodian described in s. 48.62 (2), the child's court-appointed
8 special advocate, the district attorney or corporation counsel in the county in which
9 the dispositional order was entered, and, if the child is an Indian child, the Indian
10 child's Indian custodian and tribe. If the child is the expectant mother of an unborn
11 child under s. 48.133, the court shall also notify the unborn child by the unborn
12 child's guardian ad litem; ~~or. If the proceeding involves an adult expectant mother~~
13 ~~of an unborn child under s. 48.133, the court shall notify the adult expectant mother,~~
14 the unborn child through the unborn child's guardian ad litem, all parties bound by
15 the dispositional order, and the district attorney or corporation counsel in the county
16 in which the dispositional order was entered, at least 3 days prior to the hearing. A
17 copy of the request or proposal shall be attached to the notice. If all parties consent,
18 the court may proceed immediately with the hearing. No revision may extend the
19 effective period of the original order.

20 **SECTION 103.** 48.365 (1m) of the statutes is amended to read:

21 48.365 (1m) The parent, child, guardian, legal custodian, Indian custodian,
22 expectant mother, unborn child by the unborn child's guardian ad litem, any person
23 or agency bound by the dispositional order, the district attorney or corporation
24 counsel in the county in which the dispositional order was entered, or the court on
25 its own motion, may request an extension of an order under s. 48.355 including an

1 order under s. 48.355 that was entered before the child was born. The request shall
2 be submitted to the court which that entered the order. ~~No~~ An order under s. 48.355
3 may be extended ~~except~~ only as as provided in this section.

4 **SECTION 104.** 48.365 (2) of the statutes is amended to read:

5 48.365 (2) No order may be extended without a hearing. The court shall ~~notify~~
6 provide notice of the time and place of the hearing to the child, the child's parent,
7 guardian, and legal custodian, all the parties present at the original hearing, the
8 child's foster parent, treatment foster parent or other physical custodian described
9 in s. 48.62 (2), the child's court-appointed special advocate, the district attorney or
10 corporation counsel in the county in which the dispositional order was entered and,
11 if the child is an Indian child, the Indian child's Indian custodian and tribe. If the
12 child is an expectant mother of an unborn child under s. 48.133, the court shall also
13 notify the unborn child by the unborn child's guardian ad litem, or. If the extension
14 hearing involves an adult expectant mother of an unborn child under s. 48.133, the
15 court shall notify the adult expectant mother, the unborn child through the unborn
16 child's guardian ad litem, all the parties present at the original hearing, and the
17 district attorney or corporation counsel in the county in which the dispositional order
18 was entered, of the time and place of the hearing.

19 **SECTION 105.** 48.365 (2g) (b) 4. of the statutes is created to read:

20 48.365 (2g) (b) 4. If the child is an Indian child who is placed outside the home,
21 specific information showing that active efforts have been made to prevent the
22 breakup of the Indian family and that those efforts have proved unsuccessful.

23 **SECTION 106.** 48.365 (2m) (a) 1. of the statutes is amended to read:

24 48.365 (2m) (a) 1. Any party may present evidence relevant to the issue of
25 extension. If the child is placed outside of his or her home, the person or agency

1 primarily responsible for providing services to the child shall present as evidence
2 specific information showing that the person or agency has made reasonable efforts
3 to achieve the goal of the child's permanency plan, unless return of the child to the
4 home is the goal of the permanency plan and any of the circumstances ~~specified in~~
5 under s. 48.355 (2d) (b) 1. to 5. applies. If an Indian child is placed outside the home,
6 the person or agency primarily responsible for providing services to the Indian child
7 shall also present as evidence specific information showing that the person or agency
8 has made active efforts to prevent the breakup of the Indian family and that those
9 efforts have proved unsuccessful.

10 1m. The judge shall make findings of fact and conclusions of law based on the
11 evidence. The findings of fact shall include a finding as to whether reasonable efforts
12 were made by the agency primarily responsible for providing services to the child to
13 achieve the goal of the child's permanency plan, unless return of the child to the home
14 is the goal of the permanency plan and the judge finds that any of the circumstances
15 ~~specified in~~ under s. 48.355 (2d) (b) 1. to 5. applies. If the child is an Indian child who
16 is placed outside the home, the findings of fact shall also include a finding as to
17 whether active efforts were made to prevent the breakup of the Indian family and
18 as to whether those efforts have proved unsuccessful. An order shall be issued under
19 s. 48.355.

20 **SECTION 107.** 48.365 (2m) (a) 3. of the statutes is amended to read:

21 48.365 (2m) (a) 3. The judge shall make the findings ~~specified in~~ under subd.
22 ~~1.~~ 1m. relating to reasonable efforts to achieve the goal of the child's permanency plan
23 and the findings ~~specified in~~ under subd. 2. on a case-by-case basis based on
24 circumstances specific to the child and shall document or reference the specific
25 information on which those findings are based in the order issued under s. 48.355.

1 An order that merely references subd. ~~1.~~ 1m. or 2. without documenting or
2 referencing that specific information in the order or an amended order that
3 retroactively corrects an earlier order that does not comply with this subdivision is
4 not sufficient to comply with this subdivision.

5 **SECTION 108.** 48.365 (2m) (ad) 1. of the statutes is renumbered 48.365 (2m) (ad)
6 and amended to read:

7 48.365 (2m) (ad) If the judge finds that any of the circumstances ~~specified in~~
8 under s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the judge shall hold
9 a hearing under s. 48.38 (4m) within 30 days after the date of that finding to
10 determine the permanency plan for the child. ~~If a hearing is held under this~~
11 ~~subdivision, the agency responsible for preparing the permanency plan shall file the~~
12 ~~permanency plan with the court not less than 5 days before the date of the hearing.~~

13 **SECTION 109.** 48.365 (2m) (ad) 2. of the statutes is repealed.

14 **SECTION 110.** 48.365 (2m) (ag) of the statutes is amended to read:

15 48.365 (2m) (ag) The court shall give a foster parent, treatment foster parent,
16 or other physical custodian described in s. 48.62 (2) who is notified of a hearing under
17 ~~par. (ad) 2. or sub. (2)~~ an opportunity to be heard at the hearing by permitting the
18 foster parent, treatment foster parent, or other physical custodian to make a written
19 or oral statement during the hearing, or to submit a written statement prior to the
20 hearing, relevant to the issue of extension. A foster parent, treatment foster parent,
21 or other physical custodian ~~described in s. 48.62 (2)~~ who receives notice of a hearing
22 under ~~par. (ad) 2. or sub. (2)~~ and an opportunity to be heard under this paragraph
23 does not become a party to the proceeding on which the hearing is held solely on the
24 basis of receiving that notice and having the opportunity to be heard.

25 **SECTION 111.** 48.38 (4) (i) of the statutes is created to read:

1 48.38 (4) (i) If the child is an Indian child, all of the following:

2 1. The name, address, and telephone number of the Indian child's Indian
3 custodian and tribe.

4 2. A description of the remedial services and rehabilitation programs offered
5 in an effort to prevent the breakup of the Indian family.

6 3. A statement as to whether the Indian child's placement is in compliance with
7 the order of placement preference specified in s. 48.345 (3m) and, if the placement
8 is not in compliance with that order, an explanation for the departure from that
9 order.

10 **SECTION 112.** 48.38 (4m) of the statutes is created to read:

11 **48.38 (4m) PERMANENCY PLAN DETERMINATION HEARING.** (a) If in a proceeding
12 under s. 48.21, 48.32, 48.355, 48.357, or 48.365 the court finds that any of the
13 circumstances under s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the
14 court shall hold a hearing within 30 days after the date of that finding to determine
15 the permanency plan for the child. If a hearing is held under this paragraph, the
16 agency responsible for preparing the permanency plan shall file the permanency
17 plan with the court not less than 5 days before the date of the hearing.

18 (b) At least 10 days before the date of the hearing the court shall notify the child,
19 any parent, guardian, and legal custodian of the child, and any foster parent,
20 treatment foster parent, or other physical custodian described in s. 48.62 (2) of the
21 child of the time, place, and purpose of the hearing.

22 (c) If the court knows or has reason to know that the child is an Indian child,
23 notice under par. (b) to the Indian child's parent shall be provided in the manner
24 specified in s. 48.273 (1) (ag). In like manner, the court shall also notify the Indian
25 child's Indian custodian and tribe. No hearing may be held under par. (a) until at

1 least 10 days after receipt of the notice by the Indian child's parent, Indian custodian,
2 and tribe. On request of the Indian child's parent, Indian custodian, or tribe, the
3 court shall grant a continuance of up to 20 additional days to enable the requester
4 to prepare for the hearing.

5 (d) The court shall give a foster parent, treatment foster parent, or other
6 physical custodian described in s. 48.62 (2) who is notified of a hearing under par. (b)
7 an opportunity to be heard at the hearing by permitting the foster parent, treatment
8 foster parent, or other physical custodian to make a written or oral statement during
9 the hearing, or to submit a written statement prior to the hearing, relevant to the
10 issues to be determined at the hearing. The foster parent, treatment foster parent,
11 or other physical custodian does not become a party to the proceeding on which the
12 hearing is held solely on the basis of receiving that notice and having the opportunity
13 to be heard.

14 **SECTION 113.** 48.38 (5) (b) of the statutes is amended to read:

15 48.38 (5) (b) The court or the agency shall notify ~~the parents of the child, the~~
16 ~~child, if he or she is 12 years of age or older, and; the child's parent, guardian, and~~
17 legal custodian; the child's foster parent, the child's treatment foster parent, the
18 operator of the facility in which the child is living, or the relative with whom the child
19 is living; and, if the child is an Indian child, the Indian child's Indian custodian and
20 tribe of the date, time, and place of the review, of the issues to be determined as part
21 of the review, and of the fact that they may have an opportunity to be heard at the
22 review by submitting written comments not less than 10 working days before the
23 review or by participating at the review. The court or agency shall notify the person
24 representing the interests of the public, the child's counsel, the child's guardian ad
25 litem, and the child's court-appointed special advocate of the date of the review, of

1 the issues to be determined as part of the review, and of the fact that they may submit
2 written comments not less than 10 working days before the review. The notices
3 under this paragraph shall be provided in writing not less than 30 days before the
4 review and copies of the notices shall be filed in the child's case record.

5 **SECTION 114.** 48.38 (5) (bm) of the statutes is created to read:

6 48.38 (5) (bm) If the child is an Indian child, notice under par. (b) to the Indian
7 child's parent, Indian custodian, and tribe shall be provided in the manner specified
8 in s. 48.273 (1) (ag). No review may be held until at least 10 days after receipt of the
9 notice by the Indian child's parent, Indian custodian, and tribe. On request of the
10 Indian child's parent, Indian custodian, or tribe, the court shall grant a continuance
11 of up to 20 additional days to enable the requester to prepare for the review.

12 **SECTION 115.** 48.38 (5) (c) 8. of the statutes is created to read:

13 48.38 (5) (c) 8. If the child is an Indian child, whether active efforts were made
14 by the agency to prevent the breakup of the Indian family and whether those efforts
15 have proved unsuccessful.

16 **SECTION 116.** 48.38 (5) (d) of the statutes is amended to read:

17 48.38 (5) (d) Notwithstanding s. 48.78 (2) (a), the agency that prepared the
18 permanency plan shall, at least 5 days before a review by a review panel, provide to
19 each person appointed to the review panel, the child's parent, guardian, and legal
20 custodian, the person representing the interests of the public, the child's counsel, the
21 child's guardian ad litem ~~and~~, the child's court-appointed special advocate, and, if
22 the child is an Indian child, the Indian child's Indian custodian and tribe a copy of
23 the permanency plan and any written comments submitted under par. (b).
24 Notwithstanding s. 48.78 (2) (a), a person appointed to a review panel, the person
25 representing the interests of the public, the child's counsel, the child's guardian ad

1 litem ~~and~~, the child's court-appointed special advocate, and, if the child is an Indian
2 child, the Indian child's Indian custodian and tribe may have access to any other
3 records concerning the child for the purpose of participating in the review. A person
4 permitted access to a child's records under this paragraph may not disclose any
5 information from the records to any other person.

6 **SECTION 117.** 48.38 (5) (e) of the statutes is amended to read:

7 48.38 (5) (e) Within 30 days, the agency shall prepare a written summary of
8 the determinations under par. (c) and shall provide a copy to the court that entered
9 the order; the child or the child's counsel or guardian ad litem; the person
10 representing the interests of the public; the child's parent ~~or~~, guardian, or legal
11 custodian; the child's court-appointed special advocate ~~and~~; the child's foster parent,
12 the child's treatment foster parent, or the operator of the facility where the child is
13 living; and, if the child is an Indian child, the Indian child's Indian custodian and
14 tribe.

15 **SECTION 118.** 48.38 (5m) (b) of the statutes is amended to read:

16 48.38 (5m) (b) Not less than 30 days before the date of the hearing, the court
17 shall notify the child; the child's parent, guardian, and legal custodian; the child's
18 foster parent or treatment foster parent, the operator of the facility in which the child
19 is living, or the relative with whom the child is living; the child's counsel, the child's
20 guardian ad litem, and the child's court-appointed special advocate; the agency that
21 prepared the permanency plan; ~~and~~ the person representing the interests of the
22 public; and, if the child is an Indian child, the Indian child's Indian custodian and
23 tribe of the date, time, and place of the hearing.

24 **SECTION 119.** 48.38 (5m) (bm) of the statutes is created to read:

1 48.38 (5m) (bm) If the child is an Indian child, notice under par. (b) to the Indian
2 child's parent, Indian custodian, and tribe shall be provided in the manner specified
3 in s. 48.273 (1) (ag). No hearing under par. (a) may be held until at least 10 days after
4 receipt of the notice by the Indian child's parent, Indian custodian, and tribe. On
5 request of the Indian child's parent, Indian custodian, or tribe, the court shall grant
6 a continuance of up to 20 additional days to enable the requester to prepare for the
7 hearing.

NOTE: Section 48.38 (5m) (c), as affected by the DHFS draft, provides that an Indian custodian and tribe do not become parties to the proceeding. Actually, 25 USC 1911 (c) grants the Indian custodian and tribe the right to intervene at any point in a proceeding involving an Indian child.

8 **SECTION 120.** 48.38 (5m) (d) of the statutes is amended to read:

9 48.38 (5m) (d) At least 5 days before the date of the hearing the agency that
10 prepared the permanency plan shall provide a copy of the permanency plan and any
11 written comments submitted under par. (c) to the court, to the child's parent,
12 guardian, and legal custodian, to the person representing the interests of the public,
13 to the child's counsel or guardian ad litem, and to the child's court-appointed special
14 advocate, and, if the child is an Indian child, to the Indian child's Indian custodian
15 and tribe. Notwithstanding s. 48.78 (2) (a), the person representing the interests of
16 the public, the child's counsel or guardian ad litem, and the child's court-appointed
17 special advocate, and, if the child is an Indian child, the Indian child's Indian
18 custodian and tribe may have access to any other records concerning the child for the
19 purpose of participating in the review. A person permitted access to a child's records
20 under this paragraph may not disclose any information from the records to any other
21 person.

22 **SECTION 121.** 48.38 (5m) (e) of the statutes is amended to read:

1 48.38 (5m) (e) After the hearing, the court shall make written findings of fact
2 and conclusions of law relating to the determinations under sub. (5) (c) and shall
3 provide a copy of those findings of fact and conclusions of law to the child; the child's
4 parent, guardian, and legal custodian; the child's foster parent or treatment foster
5 parent, the operator of the facility in which the child is living, or the relative with
6 whom the child is living; the child's court-appointed special advocate; the agency
7 that prepared the permanency plan; and the person representing the interests of the
8 public; and, if the child is an Indian child, the Indian child's Indian custodian and
9 tribe. The court shall make the findings specified in sub. (5) (c) 7. on a case-by-case
10 basis based on circumstances specific to the child and shall document or reference
11 the specific information on which those findings are based in the findings of fact and
12 conclusions of law prepared under this paragraph. Findings of fact and conclusions
13 of law that merely reference sub. (5) (c) 7. without documenting or referencing that
14 specific information in the findings of fact and conclusions of law or amended
15 findings of fact and conclusions of law that retroactively correct earlier findings of
16 fact and conclusions of law that do not comply with this paragraph are not sufficient
17 to comply with this paragraph.

18 **SECTION 122.** 48.38 (6) (cm) of the statutes is created to read:

19 48.38 (6) (cm) Standards for active efforts to prevent the breakup of an Indian
20 child's family.

21 **SECTION 123.** 48.41 (2) (e) of the statutes is created to read:

22 48.41 (2) (e) In the case of an Indian child, the consent is executed in writing,
23 recorded before the judge, and accompanied by a written certification by the judge
24 that the terms and consequences of the consent were fully explained in detail to and
25 were fully understood by the parent. The judge shall also certify that the parent fully

1 understood the explanation in English or that the explanation was interpreted into
2 a language that the parent understood. Any consent given under this paragraph
3 prior to or within 10 days after the birth of the Indian child is not valid. A parent who
4 has executed a consent under this paragraph may withdraw the consent for any
5 reason at any time prior to the entry of a final order terminating parental rights, and
6 the Indian child shall be returned to his or her parent. After the entry of a final order
7 terminating parental rights, a parent who has executed a consent under this
8 paragraph may withdraw that consent as provided in s. 48.46 (2) or 48.47 (1) or (2).

NOTE: 25 USC 1913 relating to voluntary TPR's refers to a parent of an Indian child, whether or not the parent is an Indian.

Also, 25 USC 1913 could be construed to permit an Indian custodian to consent to a TPR to an Indian child, but that construction could be held unconstitutional if it were to result in an Indian parent being deprived of his or her constitutional right to raise his or her child without his or her consent.

9 **SECTION 124.** 48.415 (2) (a) 2. a. of the statutes is amended to read:

10 48.415 (2) (a) 2. a. That the agency responsible for the care of the child and the
11 family or of the unborn child and expectant mother has made a reasonable effort to
12 provide the services ordered by the court. In this subdivision, “reasonable effort”
13 means an earnest and conscientious effort to take good faith steps to provide the
14 services ordered by the court ~~which~~ that takes into consideration the characteristics
15 of the parent or child or of the expectant mother or child, the level of cooperation of
16 the parent or expectant mother, and other relevant circumstances of the case.

17 **SECTION 125.** 48.415 (2) (a) 2. b. of the statutes is amended to read:

18 48.415 (2) (a) 2. b. That In the case of an Indian child, that the agency
19 responsible for the care of the child and the family or of the unborn child and
20 expectant mother has made ~~a reasonable~~ an active effort to provide the services
21 ordered by the court. In this subdivision, “active effort” means reasonable effort, as

1 defined in subd. 2. a., that also takes into consideration the prevailing social and
2 cultural characteristics and way of life of the Indian child's tribe and that involves
3 and uses the available resources of that tribe, Indian social services agencies, and
4 individual Indian caregivers.

5 **SECTION 126.** 48.417 (2) (cm) of the statutes is created to read:

6 48.417 (2) (cm) In the case of an Indian child, the agency primarily responsible
7 for providing services to the Indian child and the family under a court order, if
8 required under s. 48.355 (2) (b) 6v. to make active efforts to prevent the breakup of
9 the Indian family, has not provided to the Indian child's family, consistent with the
10 time period in the child's permanency plan, the services necessary to prevent the
11 breakup of the Indian family.

NOTE: This provision is not found in the DHFS draft. This provision is parallel to
s. 48.417 (2) (c), which excuses the district attorney from filing a TPR petition if
reasonable efforts to make it possible for the child to return home have not been made.
Obviously, there is no point in filing a TPR petition with respect to an Indian child if active
efforts to prevent the breakup of the Indian family have not been made because the court
could never grant a petition in such a case.

12 **SECTION 127.** 48.42 (1) (d) of the statutes is amended to read:

13 48.42 (1) (d) A statement of whether the child may be subject to the federal
14 ~~Indian child welfare act~~ Child Welfare Act, 25 USC 1911 to 1963, and, if the child may
15 be subject to that act, the names of the child's Indian custodian, if any, and tribe, if
16 known.

17 **SECTION 128.** 48.42 (1) (e) of the statutes is created to read:

18 48.42 (1) (e) If the child is an Indian child, reliable and credible information
19 showing that continued custody of the child by the child's parent or Indian custodian
20 is likely to result in serious emotional or physical damage to the child and reliable
21 and credible information showing that the agency has made active efforts to prevent
22 the breakup of the Indian family and that those efforts have proved unsuccessful.

1 **SECTION 129.** 48.42 (2) (c) of the statutes is amended to read:

2 48.42 (2) (c) The guardian, guardian ad litem ~~and~~, legal custodian, and Indian
3 custodian of the child.

4 **SECTION 130.** 48.42 (2g) (ag) of the statutes is created to read:

5 48.42 (2g) (ag) If the petitioner knows or has reason to know that the child is
6 an Indian child, the petitioner shall cause the summons and petition to be served on
7 the Indian child's parent and Indian custodian in the manner specified in s. 48.273
8 (1) (ag). In like manner, the petitioner shall also notify the Indian child's tribe of all
9 hearings on the petition. The first notice to an Indian child's tribe shall be written,
10 shall have a copy of the petition attached to it, and shall state the nature, location,
11 date, and time of the initial hearing. No hearing may be held on the petition until
12 at least 10 days after receipt of notice of the hearing by the Indian child's parent,
13 Indian custodian, and tribe. On request of the Indian child's parent, Indian
14 custodian, or tribe, the court shall grant a continuance of up to 20 additional days
15 to enable the requester to prepare for the hearing.

16 **SECTION 131.** 48.42 (4) (a) of the statutes, as affected by 2005 Wisconsin Act
17 293, is amended to read:

18 48.42 (4) (a) *Personal service.* Except as provided in this paragraph ~~and~~, par.
19 (b), and sub. (2g) (ag), a copy of the summons and petition shall be served personally
20 upon the parties specified in sub. (2), if known, at least 7 days before the date of the
21 hearing. Service of summons is not required if the party submits to the jurisdiction
22 of the court. Service upon parties who are not natural persons and upon persons
23 under a disability shall be as prescribed in s. 801.11.

24 **SECTION 132.** 48.422 (1) of the statutes is amended to read:

1 48.422 (1) The Except as provided in s. 48.42 (2g) (ag), the hearing on the
2 petition to terminate parental rights shall be held within 30 days after the petition
3 is filed. At the hearing on the petition to terminate parental rights the court shall
4 determine whether any party wishes to contest the petition and inform the parties
5 of their rights under sub. (4) and s. 48.423.

6 **SECTION 133.** 48.422 (2) of the statutes is amended to read:

7 48.422 (2) If Except as provided in s. 48.42 (2g) (ag), if the petition is contested
8 the court shall set a date for a fact-finding hearing to be held within 45 days ~~of~~ after
9 the hearing on the petition, unless all of the necessary parties agree to commence
10 with the hearing on the merits immediately.

11 **SECTION 134.** 48.422 (6) (a) of the statutes, as affected by 2005 Wisconsin Act
12 293, is amended to read:

13 48.422 (6) (a) In the case of a nonmarital child who is not adopted or whose
14 parents do not subsequently intermarry under s. 767.60 and for whom paternity has
15 not been established, or for whom a declaration of paternal interest has not been filed
16 under s. 48.025 within 14 days after the date of birth of the child or, if s. 48.42 (1g)
17 (b) applies, within 21 days after the date on which the notice under s. 48.42 (1g) (b)
18 is mailed, the court shall hear testimony concerning the paternity of the child. Based
19 on the testimony, the court shall determine whether all interested parties who are
20 known have been notified under s. 48.42 (2) and (2g) (ag). If not, the court shall
21 adjourn the hearing and order appropriate notice to be given.

22 **SECTION 135.** 48.423 (1) of the statutes, as affected by 2005 Wisconsin Act 293,
23 is amended to read:

24 **48.423 (1) RIGHTS TO PATERNITY DETERMINATION.** If a person appears at the
25 hearing and claims that he is the father of the child, the court shall set a date for a

1 hearing on the issue of paternity ~~or, if~~. If the child is an Indian child or if it appears
2 to the court that the determination of paternity may result in a finding that the child
3 is an Indian child, the court shall cause notice of the hearing on the issue of paternity
4 to be provided to the Indian child's parent, Indian custodian, and tribe under s. 48.42
5 (2g) (ag), and the hearing may not be held until at least 10 days after receipt of notice
6 under s. 48.42 (2g) (ag) by the Indian child's parent, Indian custodian, and tribe. On
7 request of the Indian child's parent, Indian custodian, or tribe, the court shall grant
8 a continuance of up to 20 additional days to enable the requester to prepare for the
9 hearing. If all parties agree, the court may immediately commence hearing
10 testimony concerning the issue of paternity. The court shall inform the person
11 claiming to be the father of the child of any right to counsel under s. 48.23. The person
12 claiming to be the father of the child must prove paternity by clear and convincing
13 evidence. A person who establishes his paternity of the child under this section may
14 further participate in the termination of parental rights proceeding only if the person
15 meets the conditions specified in sub. (2) or meets a condition specified in s. 48.42 (2)
16 ~~or (b) or (bm).~~

17 **SECTION 136.** 48.424 (1) of the statutes is amended to read:

18 48.424 (1) The purpose of the fact-finding hearing is to determine ~~whether~~
19 ~~grounds exist for the termination of parental rights in those cases where the~~
20 ~~termination in cases in which the petition was contested at the hearing on the~~
21 petition under s. 48.422 whether grounds exist for termination of parental rights
22 and, in contested cases in which the child is an Indian child, to determine whether
23 grounds exist for termination of parental rights and whether the allegations
24 specified in s. 48.42 (1) (e) are proved.

25 **SECTION 137.** 48.424 (2) (intro.) of the statutes is amended to read:

1 48.424 (2) (intro.) The fact-finding hearing shall be conducted according to the
2 procedure specified in s. 48.31 except that as follows:

3 **SECTION 138.** 48.424 (2) (a) of the statutes is amended to read:

4 48.424 (2) (a) The court may exclude the child from the hearing; ~~and,~~

5 **SECTION 139.** 48.424 (3) of the statutes is amended to read:

6 48.424 (3) If the facts are determined by a jury, the jury may only decide
7 whether any grounds for the termination of parental rights have been ~~proven~~ proved
8 and, in the case of an Indian child, whether the allegations specified in s. 48.42 (1)
9 (e) have been proved. The court shall decide what disposition is in the best interest
10 of the child.

NOTE: In the DHFS draft likelihood of serious harm is listed in the standards and factors in s. 48.426 relating to disposition. It appears, however, that likelihood of serious harm would be based on the facts, i.e., present conduct predicts future behavior, and goes to the issue of unfitness, which is determined at the fact-finding, not dispositional, stage.

11 **SECTION 140.** 48.424 (4) (intro.) of the statutes is amended to read:

12 48.424 (4) (intro.) If grounds for the termination of parental rights are found
13 by the court or jury, the court shall find the parent unfit. A finding of unfitness shall
14 not preclude a dismissal of a petition under s. 48.427 (2). The court shall then proceed
15 immediately to hear evidence and motions related to the dispositions enumerated in
16 s. 48.427. The Except as provided in s. 48.42 (2g) (ag), the court may delay making
17 the disposition and set a date for a dispositional hearing no later than 45 days after
18 the fact-finding hearing if any of the following apply:

19 **SECTION 141.** 48.424 (4) (a) of the statutes is amended to read:

20 48.424 (4) (a) All parties to the proceeding agree; ~~or,~~

21 **SECTION 142.** 48.424 (5) of the statutes is amended to read:

22 48.424 (5) If the court delays making a permanent disposition under sub. (4),
23 it may transfer temporary custody of the child to an agency for placement of the child

1 until the dispositional hearing. Placement of an Indian child under this subsection
2 shall comply with the order of placement preference under s. 48.345 (3m).

3 **SECTION 143.** 48.425 (1) (cm) of the statutes is created to read:

4 48.425 (1) (cm) If the child is an Indian child, specific information showing that
5 continued custody of the child by the parent or Indian custodian is likely to result in
6 serious emotional or physical damage to the child and, if the Indian child has
7 previously been adjudged to be in need of protection or services, specific information
8 showing that the agency or person responsible for providing services to the Indian
9 child and his or her family has made active efforts to prevent the breakup of the
10 Indian family and that those efforts have proved unsuccessful.

11 **SECTION 144.** 48.427 (5) of the statutes is created to read:

12 48.427 (5) (cm) In placing an Indian child in a preadoptive placement following
13 a transfer of guardianship and custody under sub. (3m) or (3p) or in placing an Indian
14 child in sustaining care under sub. (4), the court or an agency specified in sub. (3m)
15 (a) 1. to 4. or (am) shall comply with the order of placement preference under s. 48.345
16 (3m).

17 **SECTION 145.** 48.428 (2) (a) of the statutes, as affected by 2005 Wisconsin Act
18 232, is amended to read:

19 48.428 (2) (a) Except as provided in par. (b), when a court places a child in
20 sustaining care after an order under s. 48.427 (4), the court shall transfer legal
21 custody of the child to the county department the department, in a county having a
22 population of 500,000 or more, or a licensed child welfare agency, transfer
23 guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4. or (am), and
24 place the child in the home of a licensed foster parent, licensed treatment foster
25 parent, or kinship care relative with whom the child has resided for 6 months or

1 longer. In placing an Indian child in sustaining care, the court shall comply with the
2 order of placement preference under s. 48.345 (3m). Pursuant to such a placement,
3 this that licensed foster parent, licensed treatment foster parent, or kinship care
4 relative shall be a sustaining parent with the powers and duties specified in sub. (3).

5 **SECTION 146.** 48.428 (2) (b) of the statutes, as affected by 2005 Wisconsin Act
6 232, is amended to read:

7 48.428 (2) (b) When a court places a child in sustaining care after an order
8 under s. 48.427 (4) with a person who has been appointed as the guardian of the child
9 under s. 48.977 (2), the court may transfer legal custody of the child to the county
10 department, the department, in a county having a population of 500,000 or more, or
11 a licensed child welfare agency, transfer guardianship of the child to an agency listed
12 in s. 48.427 (3m) (a) 1. to 4. or (am), and place the child in the home of a licensed foster
13 parent, licensed treatment foster parent, or kinship care relative with whom the
14 child has resided for 6 months or longer. In placing an Indian child in sustaining
15 care, the court shall comply with the order of placement preference under s. 48.345
16 (3m). Pursuant to such a placement, that licensed foster parent, licensed treatment
17 foster parent, or kinship care relative shall be a sustaining parent with the powers
18 and duties specified in sub. (3). If the court transfers guardianship of the child to an
19 agency listed in s. 48.427 (3m) (a) 1. to 4. or (am), the court shall terminate the
20 guardianship under s. 48.977.

21 **SECTION 147.** 48.43 (5) (bm) of the statutes is created to read:

22 48.43 (5) (bm) If the child is an Indian child, the court shall also provide notice
23 of the hearing under par. (b) to the Indian child's tribe in the manner specified in s.
24 48.273 (1) (ag). No hearing may be held under par. (b) until at least 10 days after
25 receipt of notice of the hearing by the Indian child's tribe. On request of the Indian

1 child's tribe, the court shall grant a continuance of up to 20 additional days to enable
2 the tribe to prepare for the hearing.

3 **SECTION 148.** 48.43 (5) (c) of the statutes, as affected by 2005 Wisconsin Act 232,
4 is amended to read:

5 48.43 (5) (c) Following the hearing, the court shall make all of the
6 determinations specified under s. 48.38 (5) (c), except the determinations relating to
7 the child's parents. The court may amend the order under sub. (1) to transfer the
8 child's guardianship and custody to any agency specified under s. 48.427 (3m) (a) 1.
9 to 4. or (am) that consents to the transfer, if the court determines that the transfer
10 is in the child's best interest. If an Indian child's guardianship and custody are
11 transferred under this paragraph, the agency consenting to the transfer shall comply
12 with the order of placement preference specified in s. 48.345 (3m) in placing the child.

13 If an order is amended, the agency that prepared the permanency plan shall revise
14 the plan to conform to the order and shall file a copy of the revised plan with the court.
15 Each plan filed under this paragraph shall be made a part of the court order.

16 **SECTION 149.** 48.43 (5m) of the statutes is amended to read:

17 48.43 (5m) Either the court or the agency that prepared the permanency plan
18 shall furnish a copy of the original plan and each revised plan to the child, if he or
19 she is 12 years of age or over, ~~and~~ to the child's foster parent, the child's treatment
20 foster parent, or the operator of the facility in which the child is living, and, if the
21 child is an Indian child, to the Indian child's tribe.

22 **SECTION 150.** 48.43 (6) (a) of the statutes, as affected by 2005 Wisconsin Act
23 293, is amended to read:

24 48.43 (6) (a) Judgments under this subchapter terminating parental rights are
25 final and are appealable under s. 808.03 (1) according to the procedure specified in

1 s. 809.107 and are subject to a petition for rehearing or a motion for relief only as
2 provided in s. 48.46 (1m) and (2) and, in the case of an Indian child, s. 48.47 (1) and
3 (2). The attorney representing a person during a proceeding under this subchapter
4 shall continue representation of that person by filing a notice of intent to appeal
5 under s. 809.107 (2), unless the attorney has been previously discharged during the
6 proceeding by the person or by the trial court.

7 **SECTION 151.** 48.43 (6) (c) of the statutes, as created by 2005 Wisconsin Act 293,
8 is amended to read:

9 48.43 (6) (c) ~~In~~ Except as provided in s. 48.47 (1) or (2), in no event may any
10 person, for any reason, collaterally attack a judgment terminating parental rights
11 more than one year after the date on which the time limit for filing an appeal from
12 the judgment has expired, or more than one year after the date on which all appeals
13 from the judgment, if any were filed, have been decided, whichever is later.

14 **SECTION 152.** 48.46 (2) of the statutes is amended to read:

15 48.46 (2) A parent who has consented to the termination of his or her parental
16 rights under s. 48.41 or who did not contest the petition initiating the proceeding in
17 which his or her parental rights were terminated may move the court for relief from
18 the judgment on any of the grounds specified in s. 806.07 (1) (a), (b), (c), (d) or (f). Any
19 such motion shall be filed within 30 days after the entry of the judgment or order
20 terminating parental rights, unless the parent files a timely notice of intent to
21 pursue relief from the judgment under s. 808.04 (7m), in which case the motion shall
22 be filed within the time permitted by s. 809.107 (5). A motion under this subsection
23 does not affect the finality or suspend the operation of the judgment or order
24 terminating parental rights. Motions under this subsection or s. 48.47 (1) or (2) and

1 appeals to the court of appeals shall be the exclusive remedies for such a parent to
2 obtain a new hearing in a termination of parental rights proceeding.

3 **SECTION 153.** 48.47 of the statutes is created to read:

4 **48.47 Indian child; invalidation of action; withdrawal of consent;**
5 **return of custody. (1) INVALIDATION OF ACTION.** Any Indian child who is the subject
6 of an out-of-home care placement or of a termination of parental rights proceeding,
7 any parent or Indian custodian of that Indian child, or the Indian child's tribe may
8 move the court to invalidate that out-of-home care placement or termination of
9 parental rights on the grounds that the out-of-home care placement was made or
10 the termination of parental rights was ordered in violation of 25 USC 1911, 1912, or
11 1913. If the court finds that those grounds exist and if the Indian child has not been
12 adopted, the court shall invalidate the out-of-home care placement or termination
13 of parental rights and order the Indian child to be returned to his or her parent or
14 Indian custodian. If the Indian child has been adopted, the parent or Indian
15 custodian may petition the court under sub. (3) for return of custody of the Indian
16 child.

17 **(2) WITHDRAWAL OF CONSENT TO TERMINATION OF PARENTAL RIGHTS.** After the entry
18 of a final judgment terminating parental rights to an Indian child, a parent who has
19 consented to that termination under s. 48.41 (2) (e) or who did not contest the petition
20 initiating the proceeding in which his or her parental rights were terminated may
21 withdraw that consent and move the court for relief from the judgment on the
22 grounds that the consent was obtained through fraud, misrepresentation, or duress.
23 Any such motion shall be filed within 2 years after the entry of an order granting
24 adoption of the Indian child. A motion under this subsection does not affect the
25 finality or suspend the operation of the judgment or order terminating parental

1 rights or granting adoption. If the court finds that the consent was obtained through
2 fraud, misrepresentation, or duress, the court shall vacate the judgement or order
3 terminating parental rights and, if applicable, the order granting adoption.

NOTE: Current s. 48.46 (2) permits relief from a voluntary or uncontested TPR on various grounds specified in s. 806.07 (1) (a), (b), (c), (d), or (f), which include fraud, misrepresentation, or duress, but which also include mistake, inadvertence, surprise, or excusable neglect; newly-discovered evidence; a void judgment; vacation of a prior judgment; or other misconduct. For the sake of consistency do you want to broaden s. 48.47 (2) to reference all of those grounds or should we stick with the grounds set forth in ICWA?

Also, please note that this draft permits not only a parent who has voluntarily consented to a TPR but also a parent who did not contest an involuntary TPR petition to move for relief from the judgment.

4 **(3) RETURN OF CUSTODY.** (a) In this subsection:

5 1. “Former Indian custodian” means a person who was the Indian custodian of
6 an Indian child before termination of parental rights to and adoption of the Indian
7 child.

8 2. “Former parent” means a person who was the parent of an Indian child before
9 termination of parental rights to and adoption of the Indian child.

10 (b) If a final order granting adoption of an Indian child is vacated or set aside
11 or if the parental rights to an Indian child of all adoptive parents of the Indian child
12 are voluntarily terminated, the court that vacated or set aside the final decree of
13 adoption or that ordered the termination of parental rights of the adoptive parents
14 shall notify the Indian child’s former parent and former Indian custodian and the
15 former parent or former Indian custodian may petition for the return of custody of
16 the Indian child.

17 (c) On receipt of a petition under par. (b), the court shall set a date for a hearing
18 on the petition that allows reasonable time for the parties to prepare. The court shall
19 provide notice of the hearing to the guardian and legal custodian of the Indian child
20 and to all other interested parties as provided in s. 48.27 (6) and to the Indian child’s

1 former parent, former Indian custodian, and tribe in the manner specified in s.
2 48.273 (1) (ag). The hearing on the petition may not be held until at least 10 days
3 after receipt of the notice of the hearing by the Indian child's former parent, former
4 Indian custodian, and tribe. On request of the Indian child's former parent, former
5 Indian custodian, or tribe the court shall grant a continuance of up to 20 additional
6 days to enable the requester to prepare for the hearing.

7 (d) At the conclusion of the hearing, the court shall grant a petition for the
8 return of custody of the Indian child to the Indian child's former parent or former
9 Indian custodian unless there is a showing of good cause that return of custody is not
10 in the best interest of the Indian child.

11 **SECTION 154.** 48.48 (8m) of the statutes is amended to read:

12 48.48 (8m) To enter into agreements with American Indian tribes in this state
13 to implement the ~~Indian child welfare act~~ federal Indian Child Welfare Act, 25 USC
14 1911 to 1963.

15 **SECTION 155.** 48.485 of the statutes, as affected by 2005 Wisconsin Act 296, is
16 amended to read:

17 **48.485 Transfer of tribal Indian children to department for adoption.**

18 If the department accepts guardianship or legal custody or both from ~~an American~~
19 ~~Indian~~ a tribal court under s. 48.48 (3m), the department shall seek a permanent
20 adoptive placement for the child. If a permanent adoptive placement is not in
21 progress within 2 years after entry of the termination of parental rights order by the
22 tribal court, the department may petition the tribal court to transfer legal custody
23 or guardianship of the Indian child back to the Indian tribe, except that the
24 department may not petition the tribal court to transfer back to ~~a~~ an Indian tribe

1 legal custody or guardianship of a an Indian child who was initially taken into
2 custody under s. 48.195 (1).

3 **SECTION 156.** 48.63 (1) of the statutes is amended to read:

4 48.63 (1) Acting under court order or voluntary agreement, the child's parent
5 ~~or~~, guardian, or Indian custodian, the department of health and family services, the
6 department of corrections, a county department, or a child welfare agency licensed
7 to place children in foster homes, treatment foster homes, or group homes may place
8 a child or negotiate or act as intermediary for the placement of a child in a foster
9 home, treatment foster home, or group home. Voluntary agreements under this
10 subsection may not be used for placements in facilities other than foster, treatment
11 foster, or group homes and may not be extended. A foster home or treatment foster
12 home placement under a voluntary agreement may not exceed 180 days from the
13 date on which the child was removed from the home under the voluntary agreement.
14 A group home placement under a voluntary agreement may not exceed 15 days from
15 the date on which the child was removed from the home under the voluntary
16 agreement, except as provided in sub. (5). These time limitations do not apply to
17 placements made under s. 48.345, 938.183, 938.34, or 938.345. Voluntary
18 agreements may be made only under this subsection and sub. (5) (b) and shall be in
19 writing and shall specifically state that the agreement may be terminated at any
20 time by the parent ~~or~~, guardian, or Indian custodian or by the child if the child's
21 consent to the agreement is required. The child's consent to the agreement is
22 required whenever the child is 12 years of age or older.

NOTE: The DHFS draft incorporates into s. 48.63 the provisions of 25 USC 1913 relating to voluntary foster care placements. ICWA, however, does not apply to voluntary placements under s. 48.63 because those placements may be terminated at any time whereas ICWA only applies to placements in which the parent or Indian custodian cannot have the child returned upon demand. See 25 USC 1903 (1) (i). Accordingly, this draft

simply permits an Indian custodian to place an Indian child in voluntary out-of-home care and to terminate the placement at any time.

SECTION 157. 48.63 (4) of the statutes is amended to read:

48.63 (4) A permanency plan under s. 48.38 is required for each child placed in a foster home or treatment foster home under sub. (1). If the child is living in a foster home or treatment foster home under a voluntary agreement, the agency that negotiated or acted as intermediary for the placement shall prepare the permanency plan within 60 days after the date on which the child was removed from his or her home under the voluntary agreement. A copy of each plan shall be provided to the child if he or she is 12 years of age or over ~~and~~, to the child's parent or guardian, and, if the child is an Indian child, to the Indian child's Indian custodian and tribe. If the agency that arranged the voluntary placement intends to seek a court order to place the child outside of his or her home at the expiration of the voluntary placement, the agency shall prepare a revised permanency plan and file that revised plan with the court prior to the date of the hearing on the proposed placement.

SECTION 158. 48.63 (5) (b) of the statutes is amended to read:

48.63 (5) (b) If a child who is at least 14 years of age, who is a custodial parent, as defined in s. 49.141 (1) (b), or an expectant mother, and who is in need of a safe and structured living arrangement and the parent ~~or~~, guardian, or Indian custodian of the child consent, a child welfare agency licensed to place children in group homes may place the child or arrange the placement of the child in a group home described in s. 48.625 (1m). Before placing a child or arranging the placement of a child under this paragraph, the child welfare agency shall report any suspected abuse or neglect of the child as required under s. 48.981 (2). A voluntary agreement to place a child in a group home described in s. 48.625 (1m) may be made only under this paragraph,

1 shall be in writing, and shall specifically state that the agreement may be terminated
2 at any time by the parent, guardian, Indian custodian, or child. An initial placement
3 under this paragraph may not exceed 180 days from the date on which the child was
4 removed from the home under the voluntary agreement, but may be extended as
5 provided in par. (d) 3. to 6. An initial placement under this paragraph of a child who
6 is under 16 years of age on the date of the initial placement may be extended as
7 provided in par. (d) 3. to 6. no more than once.

8 **SECTION 159.** 48.63 (5) (c) of the statutes is amended to read:

9 48.63 (5) (c) A permanency plan under s. 48.38 is required for each child placed
10 in a group home under par. (b) and for any child of that child who is residing with that
11 child. The agency that placed the child or that arranged the placement of the child
12 shall prepare the plan within 60 days after the date on which the child was removed
13 from his or her home under the voluntary agreement and shall provide a copy of the
14 plan to the child ~~and~~, the child's parent or guardian, and, if the child is an Indian
15 child, the Indian child's Indian custodian and tribe.

16 **SECTION 160.** 48.63 (5) (d) 3. of the statutes is amended to read:

17 48.63 (5) (d) 3. If the agency that has placed a child under par. (b) or that has
18 arranged the placement of the child wishes to extend the placement of the child, the
19 agency shall prepare a revised permanency plan for that child and for any child of
20 that child who is residing with that child and submit the revised permanency plan
21 or plans, together with a request for a review of the revised permanency plan or plans
22 and the child's placement, to the independent reviewing agency before the expiration
23 of the child's placement. The request shall include a statement that an extension of
24 the child's placement would be in the best interests of the child, together with reliable
25 and credible information in support of that statement, a statement that the child and

1 the parent ~~or~~, guardian, or Indian custodian of the child consent to the extension of
2 the child's placement, and a request that the independent reviewing agency approve
3 an extension of the child's placement. On receipt of a revised permanency plan or
4 plans and a request for review, the independent reviewing agency shall set a time and
5 place for the review and shall advise the agency that placed the child or that arranged
6 the placement of the child of the time and place of the review.

7 **SECTION 161.** 48.63 (5) (d) 4. of the statutes is amended to read:

8 48.63 (5) (d) 4. Not less than 10 days before the review, the agency that placed
9 the child or that arranged the placement of the child shall provide a copy of the
10 revised permanency plan or plans and the request for review submitted under subd.
11 3. and notice of the time and place of the review to the child, the parent, guardian,
12 and legal custodian of the child, ~~and~~ the operator of the group home in which the child
13 is placed, and, if the child is an Indian child, the Indian child's Indian custodian and
14 tribe, together with notice of the issues to be determined as part of the permanency
15 plan review and notice of the fact that those persons may have the opportunity to be
16 heard at the review by submitting written comments to that agency or the
17 independent reviewing agency before the review or by participating at the review.

18 **SECTION 162.** 48.63 (5) (d) 5. of the statutes is amended to read:

19 48.63 (5) (d) 5. At the review, any person specified in subd. 4. may present
20 information relevant to the issue of extension and information relevant to the
21 determinations specified in s. 48.38 (5) (c). After receiving that information, the
22 independent reviewing agency shall make the determinations specified in s. 48.38
23 (5) (c) and determine whether an extension of the child's placement is in the best
24 interests of the child and whether the child and the parent ~~or~~, guardian, or Indian
25 custodian of the child consent to the extension. If the independent reviewing agency

determines that the extension is in the best interests of the child and that the child and the parent ~~or~~, guardian, or Indian custodian of the child consent to the extension, the independent reviewing agency shall approve, in writing, an extension of the placement for a specified period of time not to exceed 6 months, stating the reason for the approval, and the agency that placed the child or that arranged the placement of the child may extend the child's placement for the period of time approved. If the independent reviewing agency determines that the extension is not in the best interests of the child or that the child and the parent ~~or~~, guardian, or Indian custodian of the child do not consent to the extension, the independent reviewing agency shall, in writing, disapprove an extension of the placement, stating the reason for the disapproval, and the agency that placed the child or that arranged the placement of the child may not extend the placement of the child past the expiration date of the voluntary placement unless the agency obtains a court order placing the child in the group home after the expiration date of the voluntary placement. Notwithstanding the approval of an extension under this subdivision, the child or the parent ~~or~~, guardian, or Indian custodian of the child may terminate the placement at any time during the extension period.

SECTION 163. 48.63 (5) (d) 6. of the statutes is amended to read:

48.63 (5) (d) 6. Within 30 days after the review, the agency that prepared the revised permanency plan or plans shall prepare a written summary of the determinations specified in s. 48.38 (5) (c) that were made under subd. 5. and shall provide a copy of that summary to the independent reviewing agency, the child, the parent, guardian, and legal custodian of the child, ~~and~~ the operator of the group home in which the child was placed, and, if the child is an Indian child, the Indian child's Indian custodian and tribe.